

§ 9901.913

the exclusive representative may, upon petition by the Secretary or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority will certify the labor organization as the exclusive representative of the new larger unit.

§ 9901.913 National consultation.

(a) If, in connection with the Department or Component, no labor organization has been accorded exclusive recognition on a Department or Component basis, a labor organization that is the exclusive representative of a substantial number of the employees of the Department or Component, as determined in accordance with criteria prescribed by the Authority, will be granted national consultation rights by the Department or Component. National consultation rights will terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights will be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any Department or Component under subsection (a) of this section will—

(i) Be informed of any substantive change in conditions of employment proposed by the Department or Component; and

(ii) Be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (b)(1) of this subsection to the Department or Component by any labor organization—

(i) The Department or Component will consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(ii) The Department or Component will provide the labor organization a written statement of the reasons for taking the final action.

(c) Section 9901.913(b) does not apply where the proposed change is bargained at the national level or where con-

5 CFR Ch. XCIX (1–1–07 Edition)

tinuing collaboration procedures under § 9901.106 apply.

(d) Nothing in this section precludes the Department or the Component from seeking views and recommendations from labor organizations having exclusive representation within the Department or Component which do not have national consultation rights.

(e) Nothing in this section will be construed to limit the right of the agency or exclusive representative to engage in collective bargaining.

§ 9901.914 Representation rights and duties.

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit will be given the opportunity to be represented at—

(i) Any formal discussion between a Department management official(s) and bargaining unit employees, the purpose of which is to discuss and/or announce new or substantially changed personnel policies, practices, or working conditions. This right does not apply to meetings between a management official(s) and bargaining unit employees for the purpose of discussing operational matters where any discussion of personnel policies, practices or working conditions—

(A) Constitutes a reiteration or application of existing personnel policies, practices, or working conditions;

(B) Is incidental or otherwise peripheral to the announced purpose of the meeting; or

(C) Does not result in an announcement of a change to, or a promise to change, an existing personnel policy(s), practice(s), or working condition(s);

(ii) Any discussion between one or more Department representatives and one or more bargaining unit employees concerning any grievance filed under the negotiated grievance procedure;

Department of Defense

§ 9901.914

(iii) Any examination of a bargaining unit employee by a representative of the Department in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests such representation; or

(iv) Any discussion between one or more Department representatives and one or more bargaining unit employees in connection with a formal complaint of discrimination only if the employee(s), in his or her sole and exclusive discretion, requests such representation.

(3) Bargaining unit employees will be informed annually of their rights under paragraph (a)(2)(iii) of this section.

(4) Employee representatives employed by the Department are subject to the same expectations regarding conduct as any other employee, whether they are serving in their representative capacity or not.

(5) Except in the case of grievance procedures negotiated under this subpart, the rights of an exclusive representative under this section may not be construed to preclude an employee from—

(i) Being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance or appeal action; or

(ii) Exercising grievance or appellate rights established by law, rule, or regulation.

(b) The duty of the Secretary or appropriate Component(s) of the Department and an exclusive representative to negotiate in good faith under paragraph (a) of this section includes the obligation—

(1) To approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) To be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) To meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) If agreement is reached, to execute on the request of any party to the negotiation, a written document em-

bodiment of the agreed terms, and to take such steps as are necessary to implement such agreement; and

(5) In the case of the Department or appropriate Component(s) of the Department, to furnish information to an exclusive representative, or its authorized representative, when—

(i) Such information exists, is normally maintained in the regular course of business, and is reasonably available;

(ii) The exclusive representative has requested such information and demonstrated a particularized need for the information in order to perform its representational functions in grievance or unfair labor practice proceedings, or in negotiations; and

(iii) Disclosure is not prohibited by law.

(c) Disclosure of information in paragraph (b)(5) of this section does not include the following:

(1) Disclosure prohibited by law or regulations, including, but not limited to, the regulations in this part, Governmentwide rules and regulations, Departmental implementing issuances and other policies and regulations, and Executive orders;

(2) Disclosure of information if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information;

(3) Internal Departmental guidance, counsel, advice, or training for managers and supervisors relating to collective bargaining;

(4) Any disclosures where an authorized official has determined that disclosure would compromise the Department's mission, security, or employee safety; and

(5) Personal addresses, personal telephone numbers, personal e-mail addresses, or any other information not related to an employee's work.

(d)(1) An agreement between the Department or appropriate Component(s) of the Department and the exclusive representative is subject to approval by the Secretary.

(2) The Secretary will approve the agreement within 30 days after the

§ 9901.915

date the agreement is executed if the agreement is in accordance with the provisions of these regulations and any other applicable law, rule, regulation, issuance, or implementing issuance.

(3) If the Secretary does not approve or disapprove the agreement within the 30-day period specified in paragraph (d)(2) of this section, the agreement will take effect and is binding on the Department or Component(s), as appropriate, and the exclusive representative, but only to the extent it is consistent with Federal law, Presidential issuance (e.g., Executive order), Governmentwide regulations, issuances and implementing issuances, or the regulations in this part.

(4) A local agreement subject to a national or other controlling agreement at a higher level may be approved under the procedures of the controlling agreement or, if none, under Departmental regulations. Bargaining will be at the level of recognition except where delegated.

(5) Provisions in existing collective bargaining agreements are unenforceable if they are contrary to Federal law, Presidential issuance (e.g., Executive order), the regulations in this part, or implementing issuances. Provisions in existing collective bargaining agreements that are inconsistent with Governmentwide regulations or issuances (other than implementing issuances), are unenforceable upon expiration, extension, renewal, or renegotiation of the collective bargaining agreement, whichever occurs first.

§ 9901.915 Allotments to representatives.

(a) If the Department has received from an employee in an appropriate unit a properly executed written or electronic assignment which authorizes the Department to deduct from the pay of the employee amounts for the payment of regular and periodic dues and other financial assessments of the exclusive representative of the unit, the Department will honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment will be made at no cost to the exclusive representative or the employee. Except as provided under paragraph (b) of this section, any such as-

5 CFR Ch. XCIX (1–1–07 Edition)

signment may not be revoked for a period of 1 year.

(b) An allotment under paragraph (a) of this section for the deduction of dues with respect to any employee terminates when—

(1) The agreement between the Department or Department Component and the exclusive representative involved ceases to be applicable to the employee; or

(2) The employee is suspended or expelled from membership by the exclusive representative.

(c)(1) Subject to paragraph (c)(2) of this section, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in the Department have membership in the labor organization, the Authority will investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the Department has a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(i) The provisions of paragraph (c)(1) of this section do not apply in the case of any appropriate unit for which there is an exclusive representative.

(ii) Any agreement under paragraph (c)(1) of this section between a labor organization and the Department or Department Component with respect to an appropriate unit becomes null and void upon the certification of an exclusive representative of the unit.

§ 9901.916 Unfair labor practices.

(a) For the purpose of this subpart, it is an unfair labor practice for the Department—

(1) To interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subpart;

(2) To encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) To sponsor, control, or otherwise assist any labor organization, other